IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

(1) S.B. CIVIL WRIT PETITION NO. 5512/2005
(State of Rajasthan & Anr. Vs. Thawra & Another)

(2) S.B. CIVIL WRIT PETITION NO. 658/2007 (DR.J.)
(Thawra Meena Vs. Judge, Labour Court, Udaipur & Ors.)

Date of Order : 29/03/2007

**PRESENT**

**HON'BLE MR. JUSTICE H.R.PANWAR**

Mr. Sanjeet Purohit for workman Thawra Meena.
Mr. Rameshwar Dave, Dy. Govt. Advocate for the State & Anr-employer.

**BY THE COURT**:-

By the writ petition being S.B.Civil Writ Petition No.658/07 under Article 226 and 227 of the Constitution of India filed by petitioner-workman Thawra (for short 'the workman' hereinafter) and writ petition being S.B.Civil Writ Petition No.5512/05 filed by the State and Anr. (for short 'the employer' hereinafter) the award dated 6.11.2003 passed by respondent-the Judge, Industrial Disputes Tribunal and Labour Court, Udaipur (for short 'the Industrial Tribunal' hereinafter) in Labour Case No.10/2000, has been impugned, whereby the reference made by the State Govt. under Section 10 of the Industrial Disputes Act, 1947 (for short 'the I.D. Act' hereinafter) was

answered and it has been held that the retrenchment of the workman w.e.f. 1.7.1999 is not proper and legal, however, instead of ordering reinstatement, the Industrial Tribunal granted compensation of Rs. 25,000/- in favour of the workman.

Since both the writ petitions involve common question of law and facts and arise out of the same impugned award and between the same parties, therefore, with the consent of learned counsel for the parties, they are heard and being decided together.

The workman seeks a direction to the non-petitioners-employer to reinstate him in service with all consequential benefits. The employer seeks setting aside of the impugned award dated 06.11.2003.

I have heard learned counsel for the parties.

A reference was made by the Appropriate Government on 27.11.1999 to the effect that whether the removal of workman Thawra Meena by the employer w.e.f. 1.7.1999 was just and valid, and if not, what relief the workman was entitled to. A statement of claim was filed by the workman stating that he was appointed on the post of Class IV employee

as Cook on 24.7.1997 at Rajkiya Balika Janjatiya Hostel, Chhani, Tehsil Khewada, Udaipur and worked there upto 1.7.1999. It has also been averred that his services have been terminated by the employer without complying with the provisions of Section 25-F of the ID Act and his termination from services on 1.7.1999 was against the principles of natural justice. Neither any notice nor any compensation have been given before termination of his services.

Before the Industrial Tribunal, the employer filed reply to the claim submitted by the workman and stated that the workman was never appointed on the post of Class IV employee as Cook on regular basis, as a matter of fact he was used to be engaged as and when there was requirement of work. The petitioner was engaged on daily wages basis for preparing food for the girls of the Hostel and on expiry of the session, there was no work of cook. The State Govt. imposed a ban on taking work from the daily wages earners and decided to take work on contract basis and the workman was working on contract basis for making food for the girls and on expiry of the session, the contract work came to an end and the workman stopped working and therefore, there was no need to comply with the provisions of Section 25 F of the I.D. Act before terminating the services of the workman. The employer specifically came with a case that

there is no sanctioned post of Cook with them. However, it was admitted that the workman was engaged as daily rated cook and after 1998, the workman was working on contract basis as cook. He has not completed 240 days in any calender year before his termination. Considering the material placed before the Industrial Tribunal, the Industrial Tribunal came to the conclusion that the workman was not appointed on regular sanctioned post but he was appointed on daily wages basis and had completed 240 days in one calendar year and without complying with the provisions of Section 25- F of the I.D. Act, his services were terminated and therefore, the termination of the services of the workman w.e.f. 1.7.1999 was found to be illegal.

The case set up by the workman is that he had been working as cook w.e.f. 24.6.1996 to 1.7.1999 and his services were terminated w.e.f. 1.7.1999. Be that as it may. The Industrial Tribunal found the termination of the services of the workman in violation of the provisions of Section 25-F of the I.D. Act and instead of reinstating him, the workman was granted a lump sum compensation of Rs. 25,000/-.

Learned Deputy Government Advocate appearing for the employer submits that even according to the workman he was daily rated worker and he was not regularly appointed as there being no sanctioned post of cook and therefore, his

engagement itself was dehors the rules. He further submits that since the engagement of the workman being not a regular and against the sanctioned post, therefore, awarding compensation in lieu of reinstatement by the Industrial Tribunal is also illegal. He has relied on decisions of Hon'ble Supreme Court in State of M.P.and Others Vs. Arjunlal Rajak (2006) 2 SCC 711 and Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. And Others (2006) 5 SCC 127 and a Division Bench decision of this Court in State of Rajasthan and Ors. Vs. Rashid Mohammad 2004 (5) WLC (Raj.), 463.

While arguing the petition filed by the State of Rajasthan, learned Deputy Government Advocate has contended that the petitioner State has never appointed the workman on the sanctioned post of cook on regular basis. He was engaged on daily wages basis as a cook according to the need and also submits that the workman who was engaged on daily wages basis a cook has not worked for 240 days in any calendar year, therefore, there is no violation of the provisions of Section 25-F of the I.D. Act. He further submits that since the engagement of the workman being not a regular and against the sanctioned post, therefore, awarding compensation in lieu of reinstatement by the Industrial Tribunal is also illegal.

Before the Industrial Tribunal, the workman came with a specific case by submitting the statement of claim as also producing evidence that he was engaged by the State on 24.7.97 on the post of cook and he continued to work till 1.7.99. Learned Industrial Tribunal on appreciation of the evidence before it held that the workman has worked for 240 days in a calendar year and he has been retrenched from service without complying with the provisions of Section 25-F of the I.D. Act and as such the termination of the workman was held to be invalid. In my view, the finding of fact arrived at by the Industrial Tribunal is based on sound and proper appreciation of the evidence and calls for no interference in the writ jurisdiction.

In State of M.P.and Others Vs. Arjunlal Rajak (supra) Hon'ble Supreme Court held that it is beyond any doubt or dispute that a daily-wager does not hold a post. The Forest Department is a wing of the State. Its employees hold a status. For acquiring that status and for obtaining the constitutional protection in terms of Article 311 of the Constitution, all appointments must be made in conformity with the constitutional scheme as laid down under Articles 14 and 16 of the Constitution as well as the rules made in terms of the proviso to Article 309 of the Constitution or in terms of a legislative Act. Concededly, while appointing the respondent, the constitutional provision or

the statutory provisions had not been followed. The rights and liabilities of the parties are, therefore, governed by the terms of the contract and/or the provisions of the statute applicable in relation thereto. The respondent was not given any offer of appointment in writing. He admittedly worked in different departments of the State. His last posting was in the production division of the Forest Department in the district of Guna which as noticed above stood abolished. It is however, true that while terminating the services of the respondent the appellants had not complied with the mandatory requirements of Section 25-F of the Industrial Disputes Act, and thus, ordinarily, the workman could have been directed to be reinstated with or without back wages, but it is also well settled that when a project or a scheme or an office itself is abolished relief by way of reinstatement is not granted. Accordingly, keeping in view the fact that the services of the respondent therein were terminated on the ground that the production unit in which he was working itself had been closed, the Hon'ble Supreme Court awarded monetary compensation of Rs. 10,000/- to the workman.

In Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. And Others, Hon'ble Supreme Court finding the appointment of the workman therein in violation of the U.P. Mahapalika Adhiniyam, 1959, held that since the provisions of

the U.P. Industrial Dispute Act, 1947 had not been complied with, instead and in place of issuing a direction for reinstatement of service, interests of justice would be subserved if a compensation of Rs. 30,000/- is directed to be paid.

A Division Bench of this Court in State of Rajasthan & Ors. Vs. Rashid Mohammad (supra) while dealing with a case where the respondent Rashid Mohammad was appointed as a Guard on daily wages basis on 01.2.1990 and was finally removed on 17.5.1994 and taking into consideration the facts that already nine years have elapsed, modified the judgment of the learned Single Judge by directing that instead of reinstatement, the petitioner would be entitled to a lump sum amount of Rs. 50,000/- as compensation for full and final settlement of all his claims while relying on the decisions of Hon'ble Supreme Court in Hindustan Tin Works Pvt. Ltd. Vs. Employees of Hindustan Tin Works Pvt. Ltd. AIR 1979 SC 95, Chandu Lal Vs. The Management of M/s PAN American World Airways, AIR, 1985 SC 1128, Gujarat State Road Transport Corporation & Anr. Vs. Malu Amra, AIR 1994 SC 112, Sain Steel Products Vs. Naipal Singh and Ors. AIR 2001 SCW 2426, O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd. and Ors. (1986) 4 SCC 337 and Rolston Johan Vs. Central Government Industrial Tribunal and Labour Court and Ors. AIR

1994 SC 131.

In the instant case, the workman was not appointed on regular sanctioned post but was appointed on daily wages basis. However, finding that the workman has completed 240 days in an year and without complying with the provisions of Section 25-F of the ID Act, his services have been terminated, therefore, the Industrial Tribunal held that the termination of services of the workman was illegal. In the circumstances, therefore, since the workman was not appointed against a regular sanctioned post, therefore, the Industrial Tribunal was justified in awarding lump sum compensation in lieu of reinstatement finding that the provisions of the I.D. Act have not been complied with while terminating the services of the workman. However, in the facts and circumstances of the case and looking to the length of services rendered by the workman, in my view, the compensation awarded by the tribunal appears to be on lower side and therefore, it deserves to be enhanced from Rs. 25,000/- to Rs. 60,000/-.

In view of the aforesaid discussion and keeping in view the decisions of Hon'ble Supreme Court referred herein above, the writ petition filed by the workman is partly allowed and the impugned award dated 6.11.2003 is modified to the

extent that the compensation awarded by the tribunal is enhanced from Rs.25,000/- to Rs. 60000/-. The writ petition filed by the State is dismissed. There shall be no order as to costs.

**(H.R.PANWAR),J.**

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